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DIRECTIVE 2015-16

September 18, 2015

To: All County Boards of Elections
Directors, Deputy Directors, and Board Members

Re: State Issue 3 – Revised Ballot Language and Instructions

BACKGROUND

On Wednesday, September 16, 2015 the Ohio Supreme Court issued its decision in the ResponsibleOhio lawsuit regarding the title and ballot language for State Issue 3.¹ Today, the Ohio Ballot Board met and adopted updated language for the Secretary of State to certify and boards of elections to use.

As required by federal and state law, and as explained in [Directive 2014-19](#), absentee ballots **must be transmitted tomorrow, September 19, 2015**, to any UOCAVA voter who has submitted a valid request through **September 19, 2015**. This is not optional. Instructions for issuing those ballots are provided below.

INSTRUCTIONS

A. Certified Ballot Language

Attached is the certified version of the ballot language for State Issue 3. This is the language approved by the Ohio Ballot Board and certified by the Secretary of State. It must be used on all ballots prepared for the November 3, 2015 General Election.²

Also attached is a .txt file of the ballot language. In order to eliminate typographical errors, county boards of elections are encouraged to use the .txt file to load the ballot language into their ballot building software instead of hand keying the language. Please consult with your voting system vendor regarding the use of the .txt file.

¹ *State ex rel. ResponsibleOhio v. Ohio Ballot Bd.*, Slip Opinion No. 2015-Ohio-3758.

² The only exception to this requirement is for UOCAVA ballots issued beginning tomorrow, September 19, 2015. UOCAVA ballots issued before a board is able to procure ballots with the updated language may contain a copy of the certified ballot language and a notice, as explained in Division G of this Directive.

B. Ballot Layout and Proofing

Each board of elections is required to do the following:

- Replace the former ballot language provided for State Issue 3 with the ballot language adopted today by the Ballot Board and attached to this Directive;
- Thoroughly review and proof the language of State Issue 3 to ensure the language and its formatting matches **exactly** what is provided with this Directive;
- The Director and Deputy Director must personally review and proof every ballot style to ensure that the layout for the questions or issues that come after State Issue 3 still meet the ballot layout requirements of [Directive 2015-13](#);
- The Director and Deputy must personally review every ballot style to ensure that no question or issue is split between ballot pages or sides of a page; and

Note: Because language for a ballot question or issue may be longer than is available in a single column, it may be necessary to wrap the language from one column to the next. The “Yes/No” ovals/buttons should never stand alone in a column without any portion of the text preceding it in that column. If your voting system is capable of combining more than one column to create a wider column to avoid wrapping text, you may do so. As a general rule, you should do your best to avoid wrapping text for a ballot question or issue. The text for a ballot question or issue should never be split over two pages. You must not break State Issue 3 from one ballot sheet to another (unless you are required to provide a bi-lingual ballot).

- Re-record the audio for State Issue 3 to reflect the changes to the language of the issue.

C. Logic and Accuracy Testing

For boards of elections that have already begun logic and accuracy testing of their voting systems, the change to the State Issue 3 language requires that you retest **all** systems.

Boards must test all central count scanners prior to issuing absentee ballots in order to ensure that the ballots will scan properly when returned to the board of elections. If a board of elections conducts in-person absentee voting on DREs, the board must test the DRE voting systems prior to use for in-person absentee voting.

Note: Boards of elections must test to ensure that the data capacity of any compact flash memory card, or similar media, is large enough to accommodate the data to support both the DRE screen image files and the audio ballot files. You must consult with your vendor for assistance.

All other voting systems must be tested prior to use on Election Day.

D. Public Posting of Ballot Proofs

State law requires boards of elections to post ballot proofs for a twenty-four hour period and provide notice to the chairperson of each political party having nominated candidates to the ballot prior to printing ballots for the election.³ This requirement is statutory; it cannot be waived.

E. Handling and Processing of Two Page Ballots

For counties that do not regularly have multiple-page ballots, the Secretary of State's Office recommends the following procedures:

- **Reconciling “ballots issued” and “voters signed in”**

One ballot must be designated the “counter ballot.” This will be the ballot that advances the public count on the optical scanner (whether precinct count or central count). Generally, the first ballot sheet in a general election is designated the “counter ballot.”

If more than one ballot page is utilized as the “counter ballot” the practice of reconciling ballots to voters becomes practically impossible as determining the number of voters will not be as simple as dividing the number of pages scanned by the number of possible pages (different styles may have different numbers of ballot pages, an absentee voter may not return all pages, etc.).

- **Spoiled Ballots**

Consideration must be given to the Board's policy regarding the re-issuing of ballots to voters when a spoiled ballot is presented to election officials. If separate pages of the same ballot style are padded separately, a best practice is to issue only the ballot page containing the error. This is supported by the fact that a voter may have already inserted one of the pages into the tabulator. If the multiple-page ballot is padded together (and perhaps separated from the next sequentially number ballot by a slip-sheet), then a best practice is to issue the appropriate page to the voter and then spoil the other pages remaining in the pad for that sequentially numbered ballot.

In either case, the board must adopt a process and clearly communicate it to precinct election officials who must exercise due diligence to avoid error.

³ R.C. 3505.14.

F. Counting Absentee Ballots

When two ballots are folded together at the same time, a “nesting” effect can be created causing the ballots to “nest” or stick together at the point of the fold complicating the process of feeding the ballots into a central scanner. To avoid this problem, a best practice is to remove the ballot pages from their respective envelopes, once approved for counting, stack page 1 and 2 in separate piles and allowing them to “rest” for a day or more before scanning.

- **Ballot Box Capacity**

Be aware of the number of multiple-page ballots that a ballot box can hold. Two possible scenarios to avoid full ballot boxes:

- Deploy more scanners/ballot boxes thus spreading the quantity over additional units. This method will require individual memory cards for each scanner unit and may necessitate the assignment of precincts to particular scanners in multiple precinct voting locations.
- Remove ballots from the ballot box when it begins to get full and securely store them at the voting location using at least a tamper-evident seal, or return them to the Board of Elections using a bi-partisan team of elections officials.

G. Instructions for the Issuance of UOCAVA Ballots

Absentee ballots must be transmitted beginning tomorrow to any UOCAVA voter who has submitted a valid request.

If a board is unable to print and issue a ballot with the updated language for Issue 3, the board of elections must do all of the following:

1. Issue the ballot with the previous ballot language for State Issue 3; the board must amend the ballot in some manner as to instruct the UOCAVA voter to disregard the former language but still record the voter’s choice by marking Yes or No on the ballot (acceptable methods of “amending” the ballot include the use of labels, striking through the former language, etc.);

Note: The ballot title for State Issue 3, the question: “SHALL THE AMENDMENT BE APPROVED?” and the ovals for the voter to mark his or her choice must not be covered. The voter is being instructed to record his or her vote on the ballot.

2. Enclose with the ballot a copy of the updated language for State Issue 3; and
3. Enclose with the ballot the “Notice of Updated Ballot Language” (attached to this Directive).

A board is permitted to issue a ballot with the previous language covered (or struck through, etc.), a copy of the ballot language, and the notice only until it is able to procure ballots with the updated language.

Each board must have ballots with the updated language no later than the start of regular absentee voting on October 6, 2015 (the day after the close of voter registration). Any ballot issued during regular absentee voting must contain the updated ballot language for State Issue 3.

I appreciate your continued hard work to implement this revised ballot language. My staff is available to advise you as you complete the layout, proofing, and printing processes in time to meet the deadlines outlined in this Directive.

If you have any questions regarding this Directive, please contact the Secretary of State's elections counsel assigned to your county at (614) 466-2585.

Sincerely,



Jon Husted